

BILLING CODE: 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 52

[Docket No. 98-123-2]

RIN 0579-AB10

Pseudorabies in Swine; Payment of Indemnity

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are establishing animal health regulations to provide for the payment of indemnity by the United States Department of Agriculture for the voluntary depopulation of herds of swine known to be infected with pseudorabies. The payment of indemnity will encourage depopulation of infected herds, and therefore will reduce the risk of other swine becoming infected with the disease. We have determined that this action, which will accelerate existing pseudorabies eradication efforts, is necessary to protect swine not infected with pseudorabies from the disease.

DATES: Interim rule effective January 12, 1999. Consideration will be given only to comments received on or before March 14, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98-123-2, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 98-123-2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Keith Hand, Senior Staff Veterinarian, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737-1231, (301) 734-8073.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service's (APHIS's) regulations in 9 CFR part 85 govern the interstate movement of swine and other livestock (cattle, sheep, and goats) in order to help prevent the spread of pseudorabies.

Pseudorabies is a contagious, infectious, and communicable disease of livestock, primarily swine. The disease, also known as Aujeszky's disease, mad itch, and infectious bulbar paralysis, is caused by a herpes virus, and is known to cause reproductive problems, including abortion and stillborn death in neonatal pigs, and occasional death losses in breeding and finishing hogs. The cost of pseudorabies to pork producers alone in the United States is over \$30 million annually. Of this amount, more than half, \$17 million, represents the cost of vaccination. Another \$11 million is attributable to pig deaths. The remainder is spent on testing.

A Federal eradication program for pseudorabies was implemented in the United States in 1989. The program is cooperative in nature and involves Federal, State, and industry participation. The Federal Government coordinates the National Program, the State Governments promulgate and enforce the intrastate regulations, and producers contribute by having their herds tested, purchasing their own vaccines, and conducting risk management practices, such as cleaning and disinfecting conveyances used to transport infected swine.

In fiscal year 1998, the Federal Government appropriated \$8.6 million for its portion of the pseudorabies program. Appropriated Federal monies are used for disease surveillance and field staff. The monies spent by swine producers are used to prevent the transmission of pseudorabies within herds and to eliminate the disease from infected herds. Typically, a swine producer taking part in the eradication program will vaccinate all pigs in a

herd once pseudorabies has been identified in the herd. Breeding sows in the herd will be vaccinated two to four times a year. Newborn pigs born to sows that have antibodies to the disease are immune. Sows develop antibodies to the disease either several weeks after being infected or through vaccination. The producer will wean young pigs in the herd at 2 to 3 weeks and segregate them from the rest of the herd in nurseries, where they will be raised for approximately 2 months. At that time, the producer will transfer them to "finishing barns," where they will be raised to market weight. The producer will then ship the pigs to market under strict biosecurity methods (e.g., cleaning and disinfection of trucks previously used, or to be reused, for shipment of swine).

Breeding sows in the herd of origin that are infected with the disease are capable of producing multiple litters. Once infected, the sows go through a stage when they can shed the virus (i.e., transmit it to other swine). Following this stage, they develop antibodies to the disease. Although sows that have gone through the shedding stage have customarily been retained in the herd to produce additional litters, as of January 1, 1999, all States with pseudorabies will implement a "test and removal" requirement, to remove from each herd any sows identified with the pseudorabies virus. This removal of breeding sows will add to producer costs.

Dangers to Success of Program

Industry/State/Federal pseudorabies eradication efforts have been markedly successful. In 1992, for instance, approximately 8,000 herds of swine nationwide were infected with the disease. Today, approximately 1,000 herds are known to be infected. This represents slightly less than 1 percent of the herds of swine in the United States. The goal of the cooperative pseudorabies eradication program is the elimination of pseudorabies in the United States in the year 2000. However, at this time, the success of the program may be in jeopardy.

Because of the current depressed market conditions for swine, it appears that swine producers might decide to eliminate the costs they have been incurring to participate in the pseudorabies eradication program. In November 1997, market swine were being sold at \$45.10 per hundredweight. As of the fourth week of December 1998, market swine were valued at \$11.90 per hundredweight. A surplus of live swine, due in part to reduced export markets, has slaughter facilities operating at maximum capability. Consequently, swine producers are being forced to continue feeding swine that cannot go to slaughter. Swine that are slaughtered are being sold at prices below the costs of feeding and transportation.

Cessation of eradication efforts, particularly the elimination of herd vaccination, is likely to result in an increase in the number of herds infected with pseudorabies. This growth in pseudorabies-infected herds will likely extend the amount of time necessary to eradicate pseudorabies, ultimately cost both the industry and Federal and State Governments additional monies in eradication efforts.

Payment of Indemnity

We have determined that all of the factors discussed above--the danger of elimination of eradication efforts among some swine producers, the relatively small number of herds currently infected with pseudorabies, and the markedly depressed market prices for swine--make this an appropriate time to accelerate the pseudorabies eradication effort by swift and thorough elimination of infected herds. This action would accelerate the efforts toward removal of infected swine already underway at the State level. Therefore, in this interim rule, we are establishing regulations that will allow the Department to pay indemnity to owners of infected herds who depopulate those herds. In addition to indemnity for the value of the animals, the Department will provide funding for trucking costs to disposal, for euthanasia and disposal costs, and for cleaning and disinfection of

conveyances used for transporting the swine to disposal.

Although the regulations being established will allow for the payment of indemnity by the Department, participation in the indemnity program will be entirely voluntarily for swine producers. Producers who choose not to have an infected herd depopulated will not be required to do so. However, such producers must still adhere to the previously established program rules and regulations.

We are setting forth the provisions of this interim rule in a new part 52 in title 9 of the Code of Federal Regulations.

Program Guidelines

Swine producers who choose to take part in the indemnity program may apply for participation as of the date of publication of this interim rule in the Federal Register. Further action will be taken upon APHIS' receipt of funding for the accelerated eradication program from the Commodity Credit Corporation. The indemnity program will extend from the date of publication of this interim rule for 6 months, or until funds allocated for the program are depleted, whichever comes first. In a separate document, APHIS Docket No. 98-123-1, published in the Federal Register on January 14, 1999, the Secretary of Agriculture gave notice that he is authorizing the transfer of \$80 million in funds for the accelerated pseudorabies eradication program. Approximately 78 percent will be used for indemnity costs. The remainder will be used for euthanasia, transport, disposal, clean-up, and surveillance.

The owner of any herd that is determined to be a known pseudorabies infected herd will be eligible for payment of indemnity for depopulation. The definition of known infected herd will be the same as that set forth in 9 CFR part 85, which deals with the existing pseudorabies program. A known infected herd will be defined as any herd in which swine have been determined to be infected with pseudorabies, based on an official pseudorabies test or an approved differential pseudorabies test, or diagnosed by an official

pseudorabies epidemiologist as having pseudorabies. Through the existing pseudorabies program, infected herds have already been identified. Monitoring and surveillance conducted by APHIS and State agencies may identify additional infected herds during the accelerated eradication program.

An official pseudorabies epidemiologist will be defined as a State or Federally employed veterinarian designated by the State animal health official and the APHIS veterinarian in charge to investigate and diagnose pseudorabies in livestock.

An official pseudorabies test will be defined as in part 85 to mean any test for the diagnosis of pseudorabies approved by the Administrator and conducted in a laboratory approved by the Administrator as listed in a Veterinary Services Notice listing such laboratories.

The following tests for the diagnosis of pseudorabies have been approved by the Administrator:

- Microtitration serum-virus neutralization test
- Virus isolation and identification test
- Fluorescent antibody tissue section test
- Enzyme-linked immunosorbent assay (ELISA) test, except for approved differential pseudorabies tests other than the glycoprotein I (gpI) ELISA test
- Latex agglutination test (LAT)
- Particle concentration fluorescence immunoassay (PCFIA) test

State, Federal, and university laboratories will be approved by the Administrator to conduct official pseudorabies tests following his determination that the laboratory has personnel trained at the Veterinary Services Diagnostic Laboratory at Ames, IA, assigned to supervise the test, follows standard test protocol, meets check test proficiency requirements, and will report all test results to State and Federal animal health officials. Lists of approved laboratories are periodically published in the Notices section of the Federal Register.

An approved pseudorabies differential test also will be defined as in current part 85 to mean any test for the diagnosis of pseudorabies that can distinguish vaccinated swine from infected swine; is produced under license from the Secretary of Agriculture under the Virus-Serum-Toxin Act of March 4, 1913, and subsequent amendments (21 U.S.C. 151 et seq.) with indications for use in the Cooperative State-Federal Pseudorabies Eradication Program; and is conducted in a laboratory approved by the Administrator.

Fair Market Value

The Department will pay fair market value for swine depopulated due to pseudorabies. The fair market value of the animals will be appraised by an APHIS employee and a representative of the State jointly, or, if the State authorities approve, by an APHIS official alone. The fair market value will be based primarily on a per pound compensation. The per pound compensation will be based on the weighted average base market prices of the previous week (as released in "USDA-AMS Livestock Market News"). The per pound compensation amount will be updated each week. An additional producer cost offset will be paid according to whether the animal is a breeder pig, a baby pig or market hog less than 200 pounds, or a market hog greater than 200 pounds. Animals may be appraised in groups, provided that, where the appraisal is by head for cost offset purposes, each animal in the group is the same type. As noted, each animal in the group will be the same value per pound.

Appraisals of animals will be reported on forms furnished by APHIS. Reports of appraisals will show the number of animals and the value per head or the weight and value by pound.

All premises, including barns, stockyards, and pens, and all cars and other conveyances, and the materials on any premises or conveyances used to house or transport swine for which indemnity is paid under the provisions of this interim rule must be cleaned and disinfected under the supervision of an APHIS employee or a State representative before being reused to house or

convey swine. The producers of the swine for which indemnity is paid will be responsible for the costs of all cleaning and disinfection, except for the cleaning and disinfection of conveyances used to transport the swine to the disposal location. Once the swine purchased by the Department have been removed from the premises where they were kept, additional swine may not be moved onto those premises for at least 30 days following the approved cleaning and disinfection of premises.

Claims for the compensation for the value of animals destroyed must be presented, through the inspector in charge, to APHIS on a form furnished by APHIS. The owner of the animals must certify on the form that the animals covered either are or are not subject to any mortgage. If the owner states that there is a mortgage, the owner, and each person holding a mortgage on the animals, must sign forms furnished by APHIS consenting to the payment of indemnity to the owner or lienholder.

This interim rule provides that no indemnity will be paid if the infected animals have been moved or handled by the owner in violation of a law or regulation administered by the Secretary regarding animal disease, or in violation of a law or regulation for which the Secretary has entered into a cooperative agreement.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. We are making this action effective upon signature. This effective date is necessary to ensure that the pseudorabies accelerated eradication program is implemented as soon as possible to prevent the spread of pseudorabies.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 533 to make the rule effective

less than 30 days after publication. We will consider comments that are received within 60 days of publication of this rule in the Federal Register. After the comment period closes, we will publish another document in the Federal Register. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be economically significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. We have done a preliminary analysis of the potential costs and benefits of this rule in accordance with Executive Order 12866, as follows. A final analysis will be published in a subsequent document published in the Federal Register.

Potential Economic Impact

Pseudorabies is a herpes virus disease primarily affecting swine, that is known to cause reproductive problems, including abortion and stillborn death in neonatal pigs, and occasional death losses in breeding and finishing hogs. The disease is recognized to cause considerable economic loss. The cost to pork producers alone is over \$30 million annually. Of this amount, \$17 million represents the cost of vaccination. Another \$11 million is attributable to pig deaths, and the remainder is spent on testing.

A Federal eradication program for this disease was implemented in the United States in 1989. The program is cooperative in nature and involves Federal, State, and industry participation. The Federal Government coordinates the National Program, the State Governments promulgate and enforce intrastate regulations, and producers contribute by testing their herds and purchasing vaccines. For the 1999 fiscal year, Congress appropriated close to \$9.1 million for Federal Government participation in the pseudorabies program, including funds for monitoring and surveillance.

The pseudorabies eradication program has been markedly successful. By 1992, nearly 8,000 herds had been identified as being infected with pseudorabies. Currently, there are just over 1,000 herds, or slightly less than 1 percent of the total number of U.S. herds, left remaining under quarantine for pseudorabies in the United States. As of September 30, 1998, herds under quarantine were distributed as follows. (Preliminary information available to APHIS indicates that some of these numbers have decreased since September.)

<u>Number of Herds Under Quarantine and Swine by State</u>		
<u>States</u>	<u>Herds Under Quarantine</u>	<u>Number of Swine</u>
Arkansas	1	1,000
California	2	5,000
Florida	14	354
Illinois	14	3,912
Indiana	214	153,010
Iowa	632	479,520
Louisiana	1	7
Massachusetts	1	1,000
Michigan	3	18,902
Minnesota	147	180,714
Nebraska	17	1,100
North Carolina	226	850,757
Pennsylvania	6	6,815
South Dakota	2	1,100
Texas	2	14
<u>Total</u>	<u>1,291</u>	<u>1,719,755</u>

Due to the severe downturn in the value of market swine, progress in the pseudorabies eradication program may be threatened,. A surplus of live swine, due in part to reduced export markets, has slaughter plants operating at maximum capacity and has led to depressed prices. Consequently, swine

producers are being forced to continue feeding swine that cannot go to slaughter. Swine that are slaughtered are being sold at prices below the costs of feeding and transportation. As a result of depressed swine market prices, producers may stop vaccinating their herds because of the added expense. This could seriously affect the pseudorabies eradication program. Without vaccinations, the virus could spread to unvaccinated herds. This could increase production losses in the swine industry, increase costs to the Federal Government due to delays in eradicating the disease, and possibly jeopardize the trading position of the United States.

Pork production in the United States is a vital part of the economy. Over 19 billion pounds will be processed from about 99 million hogs in 1998. The economic impact of the industry on rural America is immense. Annual farm sales of swine in the United States usually exceed \$11 billion. The retail value of pork sold to consumers exceeds \$30 billion. In addition, the U.S. pork industry supports over 600,000 jobs and contributes to \$23 billion in personal income.

To avoid the potential costs associated with the possible reduction of producer participation in the voluntary eradication program, we are commencing a voluntary, accelerated pseudorabies eradication program in which we will pay indemnity at fair market value for, and depopulate as quickly as possible, as many pseudorabies-infected herds as possible. Normally, the fair market value of these animals would make such an operation cost-prohibitive. However, the severely depressed value of swine in the United States offers us a unique window of opportunity to pay indemnity for these animals at a considerable savings.

This may provide several benefits. First, it will reduce the presence of pseudorabies in the United States sooner than the target date.

Second, if eradication is complete, the resources that we are currently expending on our pseudorabies program can be diverted to other disease

eradication and prevention efforts, including surveillance and monitoring.

Third, swine producers will benefit by our payment of indemnity for the depopulation of infected herds. Although these producers will receive fair market value for these animals, and consequently, under present conditions, will not make a profit on their animals, they will at least be spared the continued expense of feeding and maintaining them.

The Secretary of Agriculture has authorized the transfer of \$80 million in funds from the Commodity Credit Corporation to conduct the indemnity program. This is a transfer from taxpayers. Approximately 78 percent of this money (\$62 million) will be used for indemnity costs, and the remainder will be used for euthanasia, transport, disposal (most likely through rendering), clean-up, and surveillance. Payment of indemnity will be based on fair market value, and the amount paid per pig will likely fluctuate during the course of the accelerated pseudorabies eradication program, which will last approximately 6 months. The amount authorized assumes 100 percent participation of owners with infected herds. However, participation may be limited if funds are exhausted due to increases in the fair market value above our current estimates. Funds will be paid out on a first-come-first served basis. Additionally, some producers may not choose to participate.

We anticipate that the expected decrease in the number of hogs available for market will cause an increase in the prices paid to swine producers by pork processors. In such a case, there would be some negative impact on pork processors. Currently, we do not have sufficient information to determine the effect on the market. Nor do we have sufficient information to determine the net benefit or the distributional impacts of the chosen option.

Options Considered

In assessing the need for this interim rule, we identified three alternatives. The first was to maintain the status quo. We rejected this option because it would not address the potential risks that may endanger the

pseudorabies program.

The second option would have been to provide financial assistance to the swine industry for continuation of vaccination and other herd management practices to eliminate pseudorabies. The fiscal year 2000 target for the eradication of pseudorabies could have been achieved, but monitoring and surveillance would have continued. Although this option may be less costly than the option we chose, option 3 below, we did not choose it because it does not allow us to eradicate pseudorabies as quickly as the chosen option.

The third option, to provide indemnity payments to accelerate the eradication program by providing indemnity for the depopulation of pseudorabies-infected herds, was the one we chose. Depopulation of infected herds is the single most effective way to eliminate pseudorabies. The current severely depressed values of market swine present a unique opportunity to significantly accelerate pseudorabies eradication in a cost-effective way through depopulation. At the same time, pork producers will gain some compensation for pigs they are currently paying to feed, and that many owners cannot send to slaughter due to slaughter plants already being used to maximum.

Potential Impact on Small Entities

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) impracticable. This interim rule establishes a voluntary program that allows swine producers to be paid indemnity for known pseudorabies-infected herds. Because slaughtering plants are operating at maximum capacity, it is likely that many of these swine could not be sold at market at this time, and the owners would otherwise receive no compensation for the swine. We do not anticipate any negative impact from this rule, other than perhaps some impact on pork processors who may eventually pay a higher price for swine. However, we will conduct further analyses of the potential impact of this rule. If we

determine this rule will have a significant economic impact on a substantial number of small entities, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Analysis.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579-0137 to the information collection and recordkeeping requirements. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 98-123-2. Please send a copy of your comments to: (1) Docket No. 98-123-2, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of

publication of this interim rule.

This interim rule establishes regulations to provide for the payment of indemnity by the Department for the voluntary depopulation of herds of swine known to be infected with pseudorabies. In order to take part in the indemnity program, swine producers must apply for participation, must sign a payment, appraisal and agreement form, and must certify as to whether any other parties hold mortgages on the herd. We are soliciting comments from the public concerning our information collection and recordkeeping requirements. We need this outside input to help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses).

Estimate of burden. Public reporting burden for this collection of information is estimated to average 0.26673 hour per response.

Respondents. Swine producers.

Estimated number of respondents. 1,300.

Estimated number of responses per respondent. 4.

Estimated total annual number of responses. 5,200.

Estimated total annual burden on respondents. 1,387.

Copies of this information collection can be obtained from: Clearance

Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

List of Subjects in Part 52

Animal diseases, Pseudorabies, Swine, Indemnity payments, Transportation.

Accordingly, we are amending 9 CFR, chapter I, subchapter B, by adding a new part 52 is added to read as follows:

PART 52--SWINE DESTROYED BECAUSE OF PSEUDORABIES

Sec.

52.1 Definitions.

52.2 Payment of indemnity.

52.3 Appraisal of swine.

52.4 Disinfection of premises, conveyances, and materials.

52.5 Presentation of claims.

52.6 Mortgage against animals.

52.7 Claims not allowed.

Authority: 21 U.S.C. 111-113, 114, 114a, 114a-1, 120, 121, 125, and 134b; 7 CFR 2.22, 2.80, and 371.2(d).

§ 52.1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any other employee of the Animal and Plant Health Inspection Service, United States Department of Agriculture, delegated to act in the Administrator's stead.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

APHIS employee. Any individual employed by the Animal and Plant Health Inspection Service who is authorized by the Administrator to do any work or perform any duty in connection with the control and eradication of disease.

Approved differential pseudorabies test. Any test for the diagnosis of pseudorabies that can distinguish vaccinated swine from infected swine; is produced under license from the Secretary of Agriculture under the Virus-Serum-Toxin Act of March 4, 1913, and subsequent amendments (21 U.S.C. 151 et seq.) with indications for use in the Cooperative State-Federal Pseudorabies Eradication Program; and is conducted in a laboratory approved by the Administrator.¹

Department. The United States Department of Agriculture.

Herd. Any group of swine maintained on common ground for any purpose, or two or more groups of swine under common ownership or supervision, that are geographically separated but have an interchange or movement of animals without regard to whether the animals are infected with or exposed to pseudorabies.

Inspector in charge. An APHIS employee who is designated by the Administrator to take charge of work in connection with the control and eradication of disease.

Known infected herd. Any herd in which swine have been determined to be infected with pseudorabies based on an official pseudorabies test or an approved differential pseudorabies test, or as diagnosed by an official pseudorabies epidemiologist as having pseudorabies.

¹The names and addresses of laboratories approved by the Administrator to conduct approved differential pseudorabies tests are published in the Notices Section of the Federal Register. A list of approved laboratories is also available upon request from the Animal and Plant Health Inspection Service, 4700 River Road Unit 37, Riverdale, Maryland 20737-1231. State, Federal, and university laboratories will be approved by the Administrator when he or she determines that the laboratory: (a) Employs personnel trained at the National Veterinary Services Laboratories assigned to supervise the testing; (b) follows standard test protocols; (c) meets check test proficiency requirements; and (d) will report all test results to State and Federal animal health officials. Before the Administrator may withdraw approval of any laboratory for failure to meet any of these conditions, the Administrator must give written notice of the proposed withdrawal to the director of the laboratory, and must give the director an opportunity to respond. If there are conflicts as to any material fact, a hearing will be held to resolve the conflict.

Materials. Parts of barns or other structures, straw, hay, and other feed for animals, farm products or equipment, clothing, and articles stored in or adjacent to barns or other structures.

Mortgage. Any mortgage, lien, or other security or beneficial interest held by any person other than the one claiming indemnity.

Official pseudorabies epidemiologist. A State or Federally employed veterinarian designated by the State animal health official and the veterinarian in charge to investigate and diagnose pseudorabies in livestock.

Official pseudorabies test. Any test for the diagnosis of pseudorabies approved by the Administrator and conducted in a laboratory approved by the Administrator. The following tests for the diagnosis of pseudorabies have been approved by the Administrator: 1. Microtitration Serum-Virus Neutralization Test; 2. Virus Isolation and Identification Test; 3. Fluorescent Antibody Tissue Section Test; 4. Enzyme-Linked Immunosorbent Assay (ELISA) Test, except for approved differential pseudorabies tests other than the glycoprotein I (gpI) ELISA test; 5. Latex Agglutination Test (LAT); and 6. Particle Concentration Fluorescence Immunoassay (PCFIA) Test.² State, Federal, and university laboratories will be approved by the Administrator following the his determination that the laboratory: (a) Has personnel trained at the Veterinary Services Diagnostic Laboratory at Ames, Iowa, assigned to supervise the test; (b) follows standard test protocol; (c) meets check test proficiency requirements; and (d) will report all test results to State and Federal animal health officials.³

²Copies of the test protocols (Recommended Minimum Standards for Diagnostic Tests Employed in the Diagnosis of Pseudorabies (Aujeszky's Disease) are available upon request from the Animal and Plant Health Inspection Service, Veterinary Services, Operational Support, 4700 River Road Unit 33, Riverdale, MD 20737-1231.

³Before the Administrator withdraws the approval of any laboratory, the Director of the laboratory will be given a notice by the Administrator of the proposed disapproval and the reasons for it, and the Director will have the opportunity to respond. In those instances where there are conflicts as to the facts, a hearing will be held to resolve such conflicts.

Person. Any individual, corporation, company, association, firm, partnership, society, joint stock company, or other legal entity.

Pseudorabies. The contagious, infectious, and communicable disease of livestock and other animals, also known as Aujeszky's disease, mad itch, or infectious bulbar paralysis.

Secretary. The Secretary of Agriculture of the United States, or any officer or employee of the Department delegated to act in the Secretary's stead.

State. Each of the States of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

State representative. A person regularly employed in the animal health work of a State and who is authorized by that State to perform the function involved under a cooperative agreement with the United States Department of Agriculture.

Veterinarian in charge. The veterinary official of Veterinary Services, APHIS, who is assigned by the Administrator to supervise and perform official animal health work for APHIS in the State concerned.

§ 52.2 Payment of indemnity.

The Administrator is hereby authorized to agree, on the part of the Department, to pay 100 percent of the expenses of purchase, destruction and disposition of herds of swine that are destroyed because the herds are known to be infected with pseudorabies.

§ 52.3 Appraisal of swine.

(a) Herds of swine destroyed because the herds are known to be infected with pseudorabies will be appraised by an APHIS employee and a representative of the State jointly, or, if the State authorities approve, by an APHIS employee alone.

(b) The appraisal of swine will be based on the fair market value as determined by the meat or breeding value of the animals. Animals may be appraised in groups, provided that where appraisal is by the head, each animal in the group is the same value per head, and where appraisal is by the pound, each animal in the group is the same value per pound.

(c) Appraisals of swine must be reported on forms furnished by APHIS and signed by the owner of the swine. Reports of appraisals must show the number of swine and the value per head or the weight and value by pound.

(Approved by the Office of Management and Budget under control number 0579-0137).

§ 52.4 Disinfection of premises, conveyances, and materials.

All premises, including barns, stockyards and pens, and all cars and other conveyances, and the materials on any premises or conveyances used to house or transport swine for which indemnity is paid under this part must be cleaned and disinfected under the supervision of an APHIS employee after removal of the swine from the known infected herd. Premises may not be restocked with swine for at least 30 days following an approved cleaning and disinfection. The owner to whom the indemnity is paid will be responsible for expenses incurred in connection with the cleaning and disinfection, except for cleaning and disinfection of the conveyances used to transport the swine to the location of disposal.

§ 52.5 Presentation of claims.

Claims for compensation for the value of animals destroyed must each be presented, through the inspector in charge, to APHIS on a form furnished by APHIS.

(Approved by the Office of Management and Budget under control number 0579-0137).

§ 52.6 Mortgage against animals.

When swine have been destroyed under this part, any claim for indemnity

must be presented on forms furnished by APHIS. The owner of the swine must certify on the forms that the swine covered are, or are not, subject to any mortgage as defined in this part. If the owner states there is a mortgage, the owner and each person holding a mortgage on the swine must sign, consenting to the payment of indemnity to the person specified on the form.

(Approved by the Office of Management and Budget under control number 0579-0137).

§ 52.7 Claims not allowed.

(a) The Department will not allow claims arising out of the destruction of swine unless the swine have been appraised as prescribed in this part and the owners have signed a written agreement to the appraisals.

(b) The Department will not allow claims arising out of the destruction of swine that have been moved or handled by the owner or a representative of the owner in violation of a law or regulation administered by the Secretary regarding animal disease, or in violation of a law or regulation for which the Secretary has entered into a cooperative agreement.

(Approved by the Office of Management and Budget under control number 0579-0137).

Done in Washington, DC, this 12th day of January 1999.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.